

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>BOB J. SETTLE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION</b>
<b>v.</b>	)	
	)	<b>No. 04-2129-CM</b>
<b>WAYNE NORTH, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**ORDER TO TRANSFER VENUE**

For the reasons set forth below, the court finds that venue is proper in California, and hereby transfers this case to the United States District Court for the Southern District of California.

**I. Facts**

Plaintiff Bob J. Settle, proceeding *pro se*, filed this action on March 30, 2004 against defendants Maxine Beye and Laurel Hill Escrow Services, Inc. ("Laurel Hill"), as well as several other defendants who have since been dismissed. *See* Docs. 44, 50. Plaintiff's complaint asserts a federal claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, as well as several other state law claims.

On June 8, 2004, Laurel Hill and Maxine Beye filed separate, but similar, motions to dismiss for improper venue or, in the alternative, to transfer the case to the Southern District of California (Docs. 16 & 17). On August 10, 2004, Judge G. Thomas VanBebber granted plaintiff's motion to strike the motions to dismiss for two reasons. First, Laurel Hill's motion was signed by Donald Merkin, an attorney from the state of California. Mr. Merkin had not filed a motion to be admitted *pro hac vice* for this case under D. Kan. Rule 83.5.4. Second, neither Laurel Hill nor Ms. Beye had certified that they had mailed copies of their motions to the other defendants.

On August 24, 2004, Laurel Hill and Ms. Beye filed a joint Supplemental Motion to Dismiss for Improper Venue; or in the Alternative to Transfer for Improper Venue (Doc. 38). Judge VanBebber dismissed this motion as moot after finding that the parties had come to an agreement on all of the outstanding claims (Doc. 44). Litigation continues, however, because plaintiff now asserts that Laurel Hill and Ms. Beye breached this agreement.

Laurel Hill and Ms. Beye again pursued the venue issue on January 24, 2006 (Doc. 99) when responding to questions the court asked in its January 4, 2006 Order (Doc. 97). Laurel Hill and Ms. Beye briefly asserted that since they are both California residents, venue in Kansas is improper. Notably, the court has yet to address the merits of Laurel Hill and Ms. Beye's venue arguments.

Recognizing its need to address this issue, on July 21, 2006, the court ordered plaintiff to show cause within five business days why the court should not transfer this case to the Southern District of California for improper venue (Doc. 139). By the court's calculation, five business days from Friday, July 21, 2006 is Friday, July 28, 2006. In lieu of a response, plaintiff filed a motion to set aside the court's show cause order and/or stay the case on July 31, 2006 (Doc. 143). After the court promptly denied this motion (Doc. 144), plaintiff filed a response on August 8, 2006 (Doc. 145).

## **II. Standard**

The general venue requirements are set forth in 28 U.S.C. § 1391. Upon a finding of improper venue, a district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a); *see also id.* § 1404(a). This decision "lies within the sound discretion of the district court." *Pierce v. Shorty Small's of Branson Inc.*, 137 F.3d 1190, 1191 (10<sup>th</sup> Cir. 1998). When the defendant raises the issue

of venue, the plaintiff has the burden of establishing that venue is proper in the district in which plaintiff filed the action. *Mohr v. Margolis, Ainsworth & Kinlaw Consulting, Inc.*, 434 F. Supp. 2d 1051, 1058 (D. Kan. 2006) (citation omitted).

Plaintiff brought his only federal claim under RICO, which has a special venue provision. *See* 18 U.S.C. § 1965(a); *Gen. Bedding Corp v. Echevarria*, 714 F. Supp. 1142, 1144 (D. Kan. 1989). Section 1965(a) states: “Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.” “The special venue provision is not exclusive, however, and the venue provisions in section 1391(b) also apply to RICO claims.” *Gen. Bedding Corp*, 714 F. Supp. at 1144 (citations omitted). Therefore, RICO’s venue provision is intended to liberalize the ordinary venue provisions. *Miceli v. Stromer*, 675 F. Supp. 1559, 1564 (D. Colo. 1987); *Van Schaick v. Church of Scientology of Cal., Inc.*, 535 F. Supp. 1125, 1133 (D. Mass. 1982); *see also Gen. Bedding Corp.*, 714 F. Supp. at 1144 (finding that if venue is proper under § 1391, it will be proper under § 1965(a)).

### **III. Analysis**

Before addressing the venue issue, the court first finds that plaintiff’s response to the court’s show cause order was untimely. Plaintiff filed his response on August 8, 2006, over a week after his deadline of July 28, 2006. Even if the court were to toll plaintiff’s response deadline pending the disposition of plaintiff’s motion to set aside—which it will not—plaintiff’s response is still late because plaintiff filed his motion to set aside on July 31, 2006, or one day late. Accordingly, the court will not consider plaintiff’s response for purposes of this Order.

The court finds that venue is proper in the Southern District of California under both the

ordinary venue statute, 28 U.S.C. § 1391, and RICO's venue provisions, 18 U.S.C. § 1965(a). Both Ms. Beye and Laurel Hill assert that they are residents of California, and the court has no reason to believe otherwise, especially considering that both Ms. Beye's and Laurel Hill's mailing addresses are in California, and both were served in California. Pursuant to 28 U.S.C. § 1391(b)(1) and (3), venue is proper in California, where both of the defendants reside, or in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." Moreover, pursuant to RICO's venue statute, venue is proper in California, where defendants reside and are found. 18 U.S.C. § 1965(a); *See Van Schaick*, 535 F. Supp. at 1133 ("For a corporate defendant in a private action under [18 U.S.C. § 1965(a)] to be 'found' in the district within the meaning of this section, it must be present in the district by its officers and agents carrying on the business of the corporation.").

Consequently, venue is proper in Kansas only if plaintiff demonstrates that the instant cause of action arose in Kansas, or that defendants transact their affairs in Kansas. *See Gen. Bedding Corp.*, 714 F. Supp. at 1144. Because he did not timely respond, plaintiff did not meet this burden. Accordingly, pursuant to § 1391(b)(1) and § 1965(a), the court finds that venue is proper in California.

Even if, out of an abundance of caution, the court considers plaintiff's arguments in favor of venue in Kansas, the result is the same. Plaintiff argues that Ms. Beye perjured herself when she stated in an affidavit that she is a resident of San Diego, California. But plaintiff does not articulate why this statement is false, much less present evidence disputing it. Plaintiff also asserts that the "original agreement" between himself and defendant North, signed on December 7, 2003, establishes venue in Kansas. Plaintiff did not, however, provide a copy of this document to the

court. And defendant North is no longer a party to this case because on November 1, 2004, Judge VanBebber granted plaintiff's oral motion to dismiss, dismissing Mr. North, along with several other defendants, with prejudice. *See* Doc. 44. This court denied plaintiff's motions to reconsider and set aside this order. *See* Doc. 150. Most importantly, plaintiff did not provide any evidence to the court indicating that the instant cause of action arose in Kansas, or that defendants transact their affairs in Kansas.

The court notes that two motions are ready for adjudication in this case. *See* Docs. 55 & 60. The court has previously considered these motions and took them under advisement pending defendants' response to numerous questions posed by the court. *See* Doc. 97. Defendants responded in a timely manner. *See* Docs. 99 & 100. Because these two motions are ripe for adjudication, the court finds that the interests of justice support a transfer of this case, rather than its dismissal. *See* 28 U.S.C. § 1406(a). **IT IS THEREFORE ORDERED** that this case is hereby transferred to the United States District Court for the Southern District of California.

Dated this 17<sup>th</sup> day of August 2006, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**